

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9467 of 1994

Date of decision: 15-9-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RATILAL K RAY

Versus

SECRETARY

Appearance:

None present for Petitioner

None present for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/09/97

ORAL JUDGEMENT

The matter was called out for hearing in the first round, second round and lastly in the third round, but none put appearance on behalf of the petitioner. Perused the special civil application and the reply filed by the respondents.

This special civil application is filed by the petitioner, a retired Executive Engineer of R & B Department of the Government of Gujarat, and challenge has been made to the memo dated 5-4-1994 issued by the respondent under which he has been served with charge sheet. The petitioner retired from service on 31st August, 1991. Challenge is made on the ground that the charge sheet has been given after retirement of the petitioner, and as such the same is illegal. It has next been contended that the charges levelled against the petitioner are frivolous and baseless. After retirement of the petitioner relation of master and servant does not survive and as such no charge sheet could have been given to the petitioner. Further contention is raised that in identical matter, being special civil application No.8397 of 1994 this court has granted interim relief staying further enquiry. Carrying further this grievance has been made that it is human right of the petitioner to live peacefully and undisturbed during the retired life, which precisely has been taken away by giving him charge sheet. The charge sheet has resulted in deprivation of the benefit of commuting pension and withholding of amount of gratuity, etc., It will result in delay in payment of G.P.F. amount also.

2. I have given my thoughtful consideration to the contention raised by the petitioner in this special civil application.

3. As this special civil application has been filed at interlocutory state, where charge sheet has been given, I do not consider it to be proper to go into all the contentions raised by the petitioner. Otherwise any finding given by this court against the petitioner could prejudice him in submitting his defence in the reply to the charge sheet. The approach of the petitioner to this court at the stage of issuance of charge sheet is highly improper and unjustified. Nothing has been decided against the petitioner. Whatever possible grounds which are available to the petitioner in defence or against the action of the respondent to issue charge sheet can be raised in his reply to the charge sheet. That has not been done. In the case of Kumar Madhuri Patel vs. Addl.

Commissioner, Tribal Development reported in (1994)6 SCC 241 and in the case of Director of Tribal Welfare, Govt. of A. P. vs. Laveti Giri and Another, reported in (1995) 4 SCC 32, their Lordships of the Supreme Court have held that intervention of the court at the stage of show cause notice is illegal. Charge sheet is nothing but only informing the petitioner of the charges and he has been called upon to give reply. Thereafter, in case reply is not found satisfactory, then, enquiry may be started and therein the petitioner will have all the opportunity of defence etc., So it is a case of only at interlocutory stage of the proceedings of enquiry and at this stage the petitioner cannot be permitted to stall the proceedings.

4. Even in the matter of disciplinary matters, after final orders this court has very limited power of judicial revise, and if that is the position of law, how far it is justified for this court to intervene at the stage where only charge sheet has been issued to the petitioner. In the case of Union of India vs. Upendra, reported in JT 1994(1) SC 658, the Supreme court has held that the Tribunal ought not to interfere at interlocutory stage. It has further been held that the Tribunal has no jurisdiction to go into correctness of the charges. Reference may have to be made to another decision of the Supreme Court in the case of Transport Commissioner vs. Tiru A. Radhakrishnan, JT 1994(7)SC 744, wherein the Court has held that Tribunal has no jurisdiction to go into the allegations, except where it is passed on no evidence. In view of this settled legal position, interference at this stage by this court is not called for.

5. In the result this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted earlier stands vacated. No order as to costs.

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